an excise tax. But where it is upon the business itself, or what is the same, aimed at the capacity and ability to do business, it is a property tax. Any graduated tax would therefore seem to be such a tax for it aims at ability and capacity, proceeding upon the principle that the abler can afford to pay more. But this would not condemn all the taxes under consideration as unconstitutional, for the Supreme Court has declared the principle that it will look through form to substance to see what the real effect is.[14] Where it is an excise tax or occupation tax in form only, and its "necessary effect is to burden interstate commerce or tax property beyond the jurisdiction of the state," it is invalid. So if a tax is in form a property tax, but in substance or effect a mere excise or occupation tax, it should be upheld. The principle that where one of two interpretations can be placed upon a statute, the one in favor of its constitutionality, the other against it, the former shall be taken,[15] fortifies this position.

*V. M. A.*

CONSTITUTIONAL LAW: MASTER AND SERVANT: HOURS OF LABOR FOR WOMEN.—Once more the attack on the constitutionality of a law regulating the hours of labor for women has proved futile. In the face of strenuous objection on the ground that such a law denies to employer and employee liberty of contract as well as the equal protection of the laws, the Supreme Court of the United States, in the cases of *Miller v. Wilson*[1] and *Bosley v. McLaughlin*[2], has sustained the California Women's Eight Hour Law.[3] Prior to 1908 there was much argument and considerable authority[4] against the constitutionality of such an act but in that year the validity of a ten hour law for women was established,[5] and the reduction of the time limit by two hours in the principal cases seems to have been accomplished without difficulty. It is noteworthy that the court, in sustaining the discrim-

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[14] Galveston H. & S. A. Ry. Co. v. Texas (1908), 210 U. S. 217, 52 L. Ed. 1031, 28 Sup. Ct. Rep. 638.

[15] Grenada County Supervisors v. Brogden (1884), 112 U. S. 261, 28 L. Ed. 704, 5 Sup. Ct. Rep. 125.

[1] (Feb. 23, 1915), 236 U. S. 373, 35 Sup. Ct. Rep. 342.

[2] (Feb. 23, 1915), 236 U. S. 385, 35 Sup. Ct. Rep. 345.

[3] 1911 Stats. Cal. 437, amended to include several other classes of occupations, 1913 Stats. Cal. 713.

[4] Ritchie v. People (1895), 155 Ill. 98, 40 N. E. 454, 46 Am. St. Rep. 315; Burcher v. Colorado (1907), 41 Colo. 495, 93 Pac. 14, 124 Am. St. Rep. 143, which apparently has not been overruled; People v. Williams (1907), 189 N. Y. 131, 81 N. E. 778, 12 L. R. A. (N. S.) 1130.

[5] Muller v. Oregon (1908), 208 U. S. 412, 52 L. Ed. 551, 28 Sup. Ct. Rep. 324, 13 Ann. Cas. 957; followed in Ohio, Hawley v. Walker (1914), 232 U. S. 718, 34 Sup. Ct. Rep. 479; Ritchie Co. v. Wayman (1910), 244 Ill. 509, 91 N. E. 695, virtually reversing Ritchie v. People, supra note 4; Commonwealth v. Riley (1912), 210 Mass. 387, 97 N. E. 367; Ann. Cas.

inatory classification of the statute, which limits the hours of labor of student, but not of graduate nurses, relied not on the citation of cases to maintain its reasoning but on a bulletin of the United States Bureau of Education.[6] What may perhaps be one way of obviating constitutional difficulties is being tried in Oregon, where an Industrial Welfare Commission limits the hours of labor and establishes minimum wage scales for the women in the various industries.[7]

The increasing liberality of the courts is manifested in the decisions regarding the regulation of the hours of labor for men, both in public and private employments. In 1890,[8] the California Supreme Court held that a city ordinance prescribing an eight-hour day on public work was invalid, while in 1904,[9] it did not commit itself on the constitutionality of a similar state law, the question not being directly raised. An example of the exercise of the gradually broadening police power is seen in cases of certain private occupations.[10] The safety of the general public has been regarded as a very satisfactory reason for sustaining such statutes,[11] and now enactments by the legislatures providing for the safety of the employees themselves by guarding against fatigue from long hours of labor are coming to be upheld by the courts.[12]

*G. H. G.*

CONSTITUTIONAL LAW: RIGHT OF COURT TO ENJOIN COLLECTION OF PENALTIES PENDING DECISION ON CONSTITUTIONALITY OF THE LAW.—It is a well settled rule that rates or regulations of public utilities cannot be imposed by a legislature or commission

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1912-D, 388, affirmed in Riley v. Massachusetts (1914), 232 U. S. 671, 34 Sup. Ct. Rep. 469; see comment 2 Cal. Law Rev. 405; (nine hours) Withey v. Bloem (1910), 163 Mich. 419, 128 N. W. 913, 35 L. R. A. N. S. 628; People v. Kane (1913), 139 N. Y. Supp. 350; (eight hours) State v. Somerville (1912), 67 Wash. 638, 122 Pac. 324; State v. Pacific American Fisheries (1913), 73 Wash. 37, 131 Pac. 452.

[6] Educational Status of Nursing, Bulletin, 1912, No. 7.

[7] Stettler v. O'Hara (Ore. 1914), 139 Pac. 743, now on appeal before the Supreme Court of the United States. See note 51 L. R. A. (N. S.) 686; Simpson v. O'Hara (Ore. 1914), 141 Pac. 158. Freund suggests the commission plan as the most feasible (Mar., 1914), 4 Am. Lab. Leg. Rev. 130.

[8] Ex parte Kuback (1890), 85 Cal. 274, 24 Pac. 737, 9 L. R. A. 482, 20 Am. St. Rep. 226.

[9] Worthington v. Breed (1904), 142 Cal. 102, 75 Pac. 675.

[10] Holden v. Hardy (1898), 169 U. S. 366, 42 L. Ed. 780, 18 Sup. Ct. Rep. 383; Matter of Martin (1909), 157 Cal. 51, 106 Pac. 235, 26 L. R. A. (N. S.), 242. But see Lochner v. New York (1905), 198 U. S. 45, 49 L. Ed. 93, 25 Sup. Ct. Rep. 539, contra.

[11] People v. Erie Ry. Co. (1910), 198 N. Y. 369, 91 N. E. 849.

[12] State v. Newman Lumber Co. (1913), 103 Miss. 263, 60 So. 215, 45 L. R. A. (N. S.) 858; State v. Bunting (Ore., 1914), 139 Pac. 731.